

UNITED STATES OF AMERICA

v.

Manning, Bradley E.  
PFC, U.S. Army,  
HHC, U.S. Army Garrison,  
Joint Base Myer-Henderson Hall  
Fort Myer, Virginia 22211

GOVERNMENT RESPONSE  
TO DEFENSE MOTION FOR  
BILL OF PARTICULARS

8 March 2012

**RELIEF SOUGHT**

COMES NOW the United States of America, by and through undersigned counsel, and respectfully requests this Court deny, in part, the defense motion to direct the United States to file a bill of particulars in the above-captioned case. The United States submits the enclosed particulars in response to paragraphs 8a-8d, 9a-9b, 11a-11f, 13a-13c, and 13e of the Defense Motion for Appropriate Relief Under Rule for Courts-Martial (RCM) 906(b)(6). *See* Enclosure 1.

**BURDEN OF PERSUASION AND BURDEN OF PROOF**

As the moving party, the defense has the burden of persuasion on any factual issue the resolution of which is necessary to decide the motion. RCM 905(c)(2). The burden of proof is by a preponderance of the evidence. RCM 905(c)(1).

**FACTS**

The United States stipulates to the facts as set forth in the defense motion. Additionally, on 8 November 2011, the United States met with the defense team, including experts, to provide a classified briefing of the evidence supporting the charges and specifications. *See* Enclosure 2. On 17-18 November 2011, the prosecution travelled to Fort Leavenworth and provided a modified version of the 8 November briefing to the accused and defense counsel. *See* Enclosure 2. On 2 December 2011, the United States served its evidence list for the Article 32 Investigation on the Investigating Officer and defense counsel. The evidence memorandum included a classified enclosure, which listed the "charged documents" by BATES number. *See* Enclosure 3 and its classified supplement.

**WITNESSES/EVIDENCE**

The United States requests the Court consider the referred charge sheet in support of its motion, as well as Enclosures 1-3.

**LEGAL AUTHORITY AND ARGUMENT**

The purpose of a bill of particulars is three-fold: (1) to inform the accused of the nature of the charge with sufficient precision to enable the accused to prepare for trial; (2) to avoid or minimize the danger of surprise at the time of trial; and (3) to enable the accused to plead the

acquittal or conviction in bar of another prosecution for the same offense when the specification itself is too vague and indefinite for such purposes. RCM 906(b)(6). A bill of particulars is not appropriate when used to conduct discovery of the Government's theory of the case, to force detailed disclosure of acts underlying a charge, or to restrict the Government's proof at trial. *Id.*

I. THE UNITED STATES SHOULD NOT BE DIRECTED TO SUBMIT A BILL OF PARTICULARS IN RESPONSE TO PARAGRAPHS 12A AND 12B OF THE DEFENSE MOTION.

The defense request for particulars in paragraphs 12a and 12b of the defense motion is an attempt to conduct discovery of the Government's theory of the case. The defense requests the United States identify "how" the accused "knowingly exceeded authorized access" in Specifications 13 and 14 of Charge II. (Def. Mot. at 6.) In other words, the defense seeks the manner in which "PFC Manning exceeded his authorized access on a Secret Internet Protocol Router Network computer." However, the purpose of a bill of particulars is to secure facts, not legal theories. *Rose v. United States*, 149 F.2d 755, 758 (9th Cir. 1945). The defense is clearly seeking an explanation of the United States' legal theory for the two specifications in question; specifically "how" the accused violated the statute in question. The defense is not entitled to such a detailed explanation of the United States' legal theory, as "exceeds authorized access" is defined by 18 U.S.C. §1030. 18 U.S.C. §1030 (e)(6) (2008). Furthermore, both specifications sufficiently inform the accused of the nature of the charge, including the classification of the computer, such that there is no danger of surprise at the time of trial. The specifications are not vague or indefinite as the accused claims. They specify where and when the accused allegedly committed the misconduct, the specific type and amount of information at issue, the classification of the material obtained, and the classification of the computer the accused is alleged to have exceeded authorized access while using. The purpose of a bill of particulars "is not to find out what the government knows, but what the government claims." *United States v. Newman*, 25 M.J. 604, 606 n.3 (A.C.M.R. 1987). In this case, the accused is on notice of the "claims" and the United States should not be directed to provide particulars explaining the evidence in detail.

II. THE UNITED STATES SHOULD NOT BE DIRECTED TO SUBMIT A BILL OF PARTICULARS IN RESPONSE TO PARAGRAPH 13D OF THE DEFENSE MOTION.

The defense request for particulars in paragraph 13d of the defense motion is also an attempt to conduct discovery of the Government's theory of the case. The defense requests the United States identify "how" unauthorized software was added to a Secret Internet Protocol Router Network (SIPRNET) computer on two separate occasions—the manner in which the accused added software to a SIPRNET computer. However, the United States has provided particulars with respect to the name of the unauthorized software added and which SIPRNET computer the software was added to during the relevant time period. *See* Enclosure 1. The United States should not be directed to explain to the accused and defense counsel "how" the software was added, as that would force the United States to explain its theory of the case for the


two specifications in question. The defense has access to two computer forensic experts, as well as forensic duplicates of the specific computer in question. These experts can explain in detail the various methods of adding software to a computer, specifically the actual computer used by the accused. The relevant specification provides sufficient notice of what the United States claims – the accused violated a lawful general regulation by adding unauthorized software – and the defense is not entitled to particulars explaining what the United States knows with respect to the method of adding software. *See Newman*, 25 M.J. at 606.

III. THE UNITED STATES SHOULD NOT BE DIRECTED TO SUBMIT A BILL OF PARTICULARS IN RESPONSE TO PARAGRAPH 10A OF THE DEFENSE MOTION.


The defense request for particulars in paragraph 10a of the defense motion attempts to restrict the Government's proof at trial. The defense relies on *Newman* for the proposition that a bill of particulars may be used to "clarify the specific theory upon which the Government intends to rely." (Def. Mot. at 5.) That language or proposition does not appear in the opinion, nor is the United States aware of any authority that suggests such a wide-reaching purpose for a bill of particulars. The defense also asserts that the specifications at issue under this paragraph make the accused susceptible to unfair surprise at trial. In fact, the specification is clear—the accused is on notice that the United States alleges he stole, purloined, or knowingly converted Government property. As a practical matter, "steal" and "purloin" have the same meaning under the law. *United States Attorneys' Manual, Criminal Resource Manual at 1639*, [http://www.justice.gov/usao/eousa/foia\\_reading\\_room/usam/title9/crm01639.htm](http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm01639.htm). Any argument the accused will be misled or paralyzed by decisions over what evidence to present to refute whether conduct constituted "stealing" or "knowing conversion" is without merit. Furthermore, the theft-related offenses alleged in this case are of specific, identified databases. There is no danger the accused will be subject to prosecution for the same offense at a later date because each specification is clear regarding what property is at issue.

**CONCLUSION**

The United States requests the Court DENY, in part, the defense motion for appropriate relief in the form of a bill of particulars. With respect to the remaining particulars requested by the defense, the United States submits Enclosure 1 for the Court's consideration.

  
JODEAN MORROW  
CPT, JA  
Trial Counsel

I certify that I served or caused to be served a true copy of the above on Mr. David E. Coombs, Civilian Defense Counsel, via electronic mail, on 8 March 2012.

  
JODEAN MORROW  
CPT, JA  
Trial Counsel